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WIND OF TRADE LLC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WIND OF TRADE LLC, a Nevada limited
liability company,

Plaintiff,

v.

MOSTAG INTERNATIONAL, INC., a
Pennsylvania corporation,

Defendant.

Case No. CV 07-06280 MMC

**DECLARATION OF COUNSEL RE:
PLAINTIFF'S SERVICE OF THE
COURT'S ORDER OF
DECEMBER 14, 2007**

I, Marc M. Gorelnik, declare:

1. I am a partner of the law firm of Townsend and Townsend and Crew LLP, the attorneys for Plaintiff Wind of Trade LLC ("plaintiff") in this case, and am duly licensed to practice in the State of California. I submit this Declaration of Counsel Re: Plaintiff's Service of the Court's Order of December 14, 2007. The following facts are within my personal knowledge and I could and would be competent to testify to them if called as a witness in this matter.

2. The Court's Order Setting Briefing Schedule of December 14, 2007 (the "Order") requires that plaintiff serve the Order on defendant by December 18 and file the proof of service by December 21, 2007. Defendant's filing in response to plaintiff's *Ex Parte* Motion for Temporary Restraining Order was due December 27, 2007, and plaintiff's reply is due January 2, 2008. As set

1 forth in the following paragraphs, plaintiff has complied with its obligations and defendant, now
2 represented by counsel, has not opposed the motion.

3 3. Plaintiff served the Order on Defendant on December 14 using facsimile and FedEx.
4 Plaintiff timely filed its proof of service on December 17. See Docket No. 16. The facsimile
5 confirmation page reflects success in transmission. See true and correct copy of transmission record,
6 Exhibit A hereto. However, FedEx's three attempts at delivery, on December 17, 18, and 21, were not
7 successful. See true and correct copy of FedEx tracking record, Exhibit B hereto.

8 4. In addition to facsimile and FedEx means of service, as reflected in the filed proof of
9 service, plaintiff retained a process server to personally deliver on defendant copies of: (1) the Order;
10 (2) the Court's Case Management Conference Order; and (3) correspondence from myself to
11 defendant's principal, William Pan. See true and correct copy of my correspondence, Exhibit C
12 hereto. In my letter, I reiterated the Court's schedule and implored Mr. Pan to retain counsel.

13 5. I am informed and believe, based on the Declaration of Richard Dougherty filed
14 contemporaneously with my declaration, that the process server went to defendant's place of business
15 on December 18 at 2:20 p.m. EST and contacted the proprietor using the supplied camera/intercom
16 system. The person apparently in charge of Defendant's place of business, believed to be the same
17 person personally served with the Complaint and Summons, refused to come to the door to accept the
18 papers. Instead, the papers were affixed to the front door of defendant's place of business.

19 6. At about 12:50 p.m. PST on December 18, roughly 90 minutes after the process server
20 made the attempted personal delivery, I received a call from a Philadelphia attorney identifying
21 himself as Mark Schaffer. Mr. Schaffer indicated that he was calling on behalf of defendant. We
22 expressly discussed, and I believed that we had agreement on, defendant's stipulation to a preliminary
23 injunction.

24 7. I explained to Mr. Schaffer that defendant must be represented in any filing or
25 appearance by counsel admitted to practice in the Northern District of California. This appeared to
26 present some degree of challenge, but I left resolution in the hands of defendant's counsel.

27 8. I am informed and believe that Mr. Schaffer subsequently spoke to my co-counsel
28 Mary Shapiro and told her that defendant would not oppose plaintiff's motion rather than retain local

1 counsel.

2 I declare under the penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct.

4 EXECUTED this 2nd day of January, 2008, at San Francisco, California.

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6 _____
7 /s/

8 Marc M. Gorelnik
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